

95 089577

RECORDED AT REQUEST OF

Owner

RECORDING REQUESTED BY

NARICSE BERGERON TRUST

WHEN RECORDED MAIL TO

JUN - 6 1995

JUN - 6 1995

AT

2 O'CLOCK

M.

CONTRA COSTA COUNTY RECORDS
STEPHEN L. WEIR
COUNTY RECORDER

FEE \$

49.00

NAME

Dept. Toxic Subs.

MAILING

700 Heinz Ave. Suite 200

CITY, STATE
ZIP CODE

Berkeley CA. 94710-2737

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLE(S)

COVENANT AND AGREEMENT TO RESTRICT USE OF PROPERTY
738 HARBOUR WAY SOUTH, RICHMOND, CALIFORNIA

COVENANT OF DEED RESTRICTION

Recording Requested By:

The Narcisse Bergeron Trust

When Recorded, Mail To:

Department of Toxic Substances Control
Region 2700 Heinz Avenue, Suite 200
Berkeley, California 94710-2737
Attention: Barbara Cook, Chief
Site Mitigation BranchCOVENANT AND AGREEMENT
TO RESTRICT USE OF PROPERTY738 Harbour Way South
Richmond, California

This Covenant and Agreement ("Covenant") is made on the ____ day of May 11, 1995 by and between the Narcisse Bergeron Trust ("Covenantor"), which is the owner of record of certain property situated in the City of Richmond, County of Contra Costa, State of California, as described in Exhibit "A" attached hereto and incorporated herein by this reference, and the Department of Toxic Substances Control (the Department). This covenant concerns a portion of the real property commonly identified as 720 South Harbour Way South.

The Property affected by this Covenant is the Richmond Plating Company Site, Tax Assessor's Parcel Number (APN) 560-232-008, ("Property"), a portion of the 720 South Harbour Way Property legally described in Exhibit A. Exhibit B is a diagram of the 720 South Harbour Way property and that portion of the property identified above as the "Property."

ARTICLE I

GENERAL PROVISIONS

1.01 Provisions to Run with the Land. This Covenant sets forth protective provisions, restrictions, and conditions (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions are imposed pursuant to Health and Safety Code sections 25222.1 and 25355.5, and run with the land pursuant to Health and Safety Code sections 25230 and 25355.5. Each and all of the Restrictions are for the benefit of and enforceable by the Department.

1.02 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed, by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the

1 benefit of future Owners and Occupants and that their interest in
2 the Property shall be subject to the Restrictions contained herein.

3 1.03 Incorporation into Deeds and Leases. Covenantor desires
4 and covenants that the Restrictions set out herein shall be
5 incorporated by reference in each and all deeds and leases of any
6 portion of the Property.

7 ARTICLE II

8 DEFINITIONS

9 2.01 Department. "Department" shall mean the California State
10 Department of Toxic Substances Control and shall include its
11 successor agencies, if any.

12 2.02 Improvements. "Improvements" shall mean all buildings,
13 roads, driveways, regrading, and paved parking areas, constructed
14 or placed upon any portion of the Property.

15 2.03 Occupant(s). "Occupant(s)" shall mean those persons
16 entitled by ownership, leasehold, or other legal relationship to
17 the exclusive right to occupy any portion of the Property.

18 2.04 Owner(s). "Owner(s)" shall mean the Covenantor or its
19 successors in interest, including heirs, and assigns, who hold
20 title to all or any portion of the Property.

21
22 ARTICLE III

23 DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

24 3.01 Restrictions on Development and Use. Covenantor promises
25 to restrict the use of the Property as diagrammed in Exhibit B and
26 identified as Assessor's Tax Parcel Number 560-232-008 as follows:
27

- 1 a. Development of the Property shall be restricted to commercial,
2 office or light industrial use in conformance with local zoning
3 codes.
- 4 b. No residence for human habitation shall be permitted on the
5 Property.
- 6 c. No hospitals or health clinics shall be permitted on the
7 Property.
- 8 d. No schools for persons under 21 years of age shall be
9 permitted on the Property.
- 10 e. No daycare centers for either children or senior citizens
11 shall be permitted on the Property.
- 12 f. The Property shall not be covered with buildings or any
13 permanent cap which would prevent access to or future remediation
14 of the Property. Replacement of the chip-seal cap by asphalt in a
15 manner which does not disturb the monitoring wells or access to
16 them shall not be considered a permanent cap.
- 17 g. No grading or excavation on the Property that would
18 permanently expose contaminated soils shall be permitted.
- 19 h. Any contaminated soils brought to the surface by grading,
20 excavation, trenching or backfilling shall be managed in accordance
21 with all applicable provisions of state and federal law.
- 22 i. The property shall be posted with a sign stating that no
23 grading, excavation or construction activities can occur on the
24 Property without written permission of the Department.

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1 j. All uses and development of the property shall preserve the
2 integrity of the groundwater monitoring system installed on the
3 Property pursuant to the requirements of the Department.

4 k. Any proposed alteration of the Cap other than replacement of
5 the chip-seal cap by asphalt in a manner which does not disturb the
6 monitoring wells or access to them as stated in section (f), shall
7 require notice to the Department.

8 l. The Owner(s) shall notify the Department of each of the
9 following: 1) The type, cause, location and date of any disturbance
10 to the Property which could expose the public or the environment
11 to the subsurface hazardous substances on the Property and 2) The
12 type and date of repair of such disturbance. Notification to the
13 Department shall be made by registered mail within ten (10) working
14 days of both the discovery of cap disturbance and the completion of
15 repairs.

16 m. The Owner agrees that the Department shall have access to the
17 Property for the purposes of inspection, surveillance or
18 monitoring, as provided for in Chapters 6.5 and 6.8 of Division 20
19 of the Health and Safety Code.

20 3.02 Conveyance of Property. The Owner(s) shall provide a
21 thirty (30) days advance notice to the Department of any sale,
22 lease, or other conveyance of the Property or an interest in the
23 Property to a third person. The Department shall not, by reason of
24 the Covenant, have authority to approve, disapprove, or otherwise
25 affect any sale, lease, or other conveyance of the Property except
26 as otherwise provided by law or by reason of this Covenant.

27

1 3.03 Notice in Agreements. All Owner(s) and Occupant(s) shall
2 execute a written instrument which shall accompany all purchase,
3 lease, sublease, or rental agreements relating to the Property.
4 The instrument shall contain the following statement:

"The land described herein has been the subject of litigation with the Department of Toxic Substances Control. A condition of the settlement requires that the owner, lessee, or other possessor of the land be subject to requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the Health and Safety Code. This statement is not a declaration that a hazard exists."

9 3.04 Enforcement. Failure of the Owner(s) to comply with any
10 of the requirements, as set forth in paragraph 3.01 shall be
11 grounds for the Department, by reason of the Covenant, to require
12 that the Owner(s) modify or remove any Improvements constructed in
13 violation of that paragraph. Violation of the Covenant shall be
14 grounds for the Department to file civil and criminal actions
15 against the Owner(s) as provided by law.

ARTICLE IV

VARIANCE AND TERMINATION

19 4.01 Variance. Any Owner(s) or, with the Owner(s)' consent,
20 any Occupant of the Property or any portion thereof may apply to
21 the Department for a written variance from the provisions of this
22 Covenant. Such application shall be made in accordance with Health
23 and Safety Code section 25233.

24 4.02 Termination. Any Owner(s) or, with the Owner's(s')
25 consent, any Occupant of the Property or a portion thereof may
26 apply to all or any portion of the Property. Such application

1 shall be made in accordance with Health and Safety Code section
2 25234.

3 4.03 Term. Unless terminated in accordance with paragraph
4 4.02 above, by law or otherwise, this Covenant shall continue in
5 effect in perpetuity.

6 ARTICLE V

7 MISCELLANEOUS

8 5.01 No dedication Intended. Nothing set forth herein shall
9 be construed to be a gift or dedication, or offer of a gift or
10 dedication, of the Property or any portion thereof to the general
11 public or for any purposes whatsoever.

12 5.02 Notices. Whenever any person gives or serves any notice,
13 demand, or other communication with respect to this Covenant, each
14 such notice, demand, or other communication shall be in writing and
15 shall be deemed effective 1) when delivered, of personally
16 delivered to the person being served or to an officer of a
17 corporate party being served or official of a government agency
18 being served, or 2) five (5) business days after deposit in the
19 mail if mailed by United States mail, postage paid certified,
20 return receipt requested:

21 To: "Covenantor"
22 The Narcisse Bergeron Trust
23 c/o Hilda Bergeron, Trustee
24 6619 Lagunitas Street
25 El Cerrito, California 94530

26 To: "Covenantor"
27 The Narcisse Bergeron Trust
c/o Lorraine Christophe, Trustee
1441 Laurentia Way
Alamo, California 94501

1 Copy to: Department of Toxic Substances Control
2 Region 2
3 700 Heinz Avenue, Suite 200
4 Berkeley, California 94710
5 Attn: Chief, Site Mitigation Branch

6 5.03 Partial Invalidity. If any portion of the Restrictions
7 or terms set forth herein is determined to be invalid for any
8 reason, the remaining portion shall remain in full force and effect
9 as if such portion had not been included herein.

10 5.04 Article Headings. Headings at the beginning of each
11 numbered article of this Covenant are solely for the convenience of
12 the parties and are not a part of the Covenant.

13 5.05 Recordation. This instrument shall be executed by the
14 Covenantor and by the Site Mitigation Branch Chief, California
15 Department of Toxic Substances Control. This instrument shall be
16 recorded by the Covenantor in the County of Contra Costa within ten
17 (10) days of the date of execution.

18 5.06 Reference. All references to the Code sections include
19 successors provisions.
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1 IN WITNESS WHEREOF, the parties execute this Covenant as of
2 the date set forth above.

3 OWNER: Narcisse Bergeron Trust

4 By: Hilda Bergeron
5 Hilda Bergeron

6 Title: Trustee

7 Date: May 11, 1995

8 OWNER: Narcisse Bergeron Trust

9 By: Lorraine Christophe
10 Lorraine Christophe

11 Title: Trustee

12 Date: May 11, 1995

13 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

14 By: Barbara J. Cook
15 Barbara J. Cook, P.E., Chief
16 Site Mitigation Branch, Region 2

17 Date: May 25, 1995

1 STATE OF CALIFORNIA)

2 COUNTY OF Contra Costa)

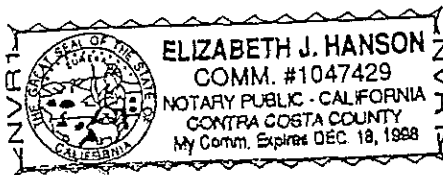
3
4
5 On May 11, 1995, before me, Elizabeth J. Hanson,

6 a Notary Public in and for said state, personally appeared Hilda
7 Bergeron, ~~personally known to me~~ or proved to me on the basis of

8 satisfactory evidence to be the person whose name is subscribed to
9 the within instrument and acknowledged to me that she executed the
10 same in her authorized capacity as Trustee for the Narcisse
11 Bergeron Trust, and that by her signature on the instrument the
12 person or the entity upon behalf of which the person acted,
13 executed the instrument.
14

15 WITNESS my hand and official seal.
16

17 Signature Elizabeth J. Hanson
18
19



1 STATE OF CALIFORNIA

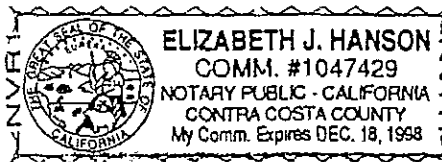
2 COUNTY OF Contra Costa

3
4 On May 11, 1995, before me, Elizabeth J. Hanson

5 a Notary Public in and for said state, personally appeared Lorraine
6 Christophe, ~~personally known to me~~ or proved to me on the basis of
7 satisfactory evidence to be the person whose name is subscribed to
8 the within instrument and acknowledged to me that she executed the
9 same in her authorized capacity as Trustee for the Narcisse
10 Bergeron Trust, and that by her signature on the instrument the
11 person or the entity upon behalf of which the person acted,
12 executed the instrument.
13

14 WITNESS my hand and official seal.
15

16
17 Signature Elizabeth J. Hanson



1 STATE OF CALIFORNIA)

2)
3 COUNTY OF Alameda)

4 On MAY 25, 1995, before me, WILLIE H. MCBRIDE,
5 a Notary Public in and for said state, personally appeared Barbara
6 J. Cook, personally known to me or proved to me on the basis of
7 satisfactory evidence to be the person whose name is subscribed to
8 the within instrument and acknowledged to me that she executed the
9 same in her authorized capacity, and that by her signature on the
10 instrument Department of Toxic Substance Control executed the
11 instrument.

12
13 WITNESS my hand and official seal.

14
15 Signature Willie H. McBride

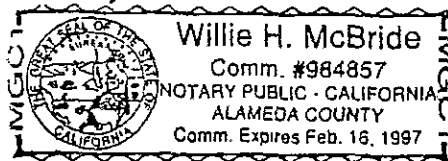


Exhibit A

Legal Description of Property on Which
The Richmond Plating Company (aka Harbour Way South)
Hazardous Waste Site is Located

As recorded on May 16, 1977, Book 8331, Official Records
of the County of Contra Costa, Page 382:

"All that real property situate in the City of Richmond,
County of Contra Costa, State of California, described as
follows:

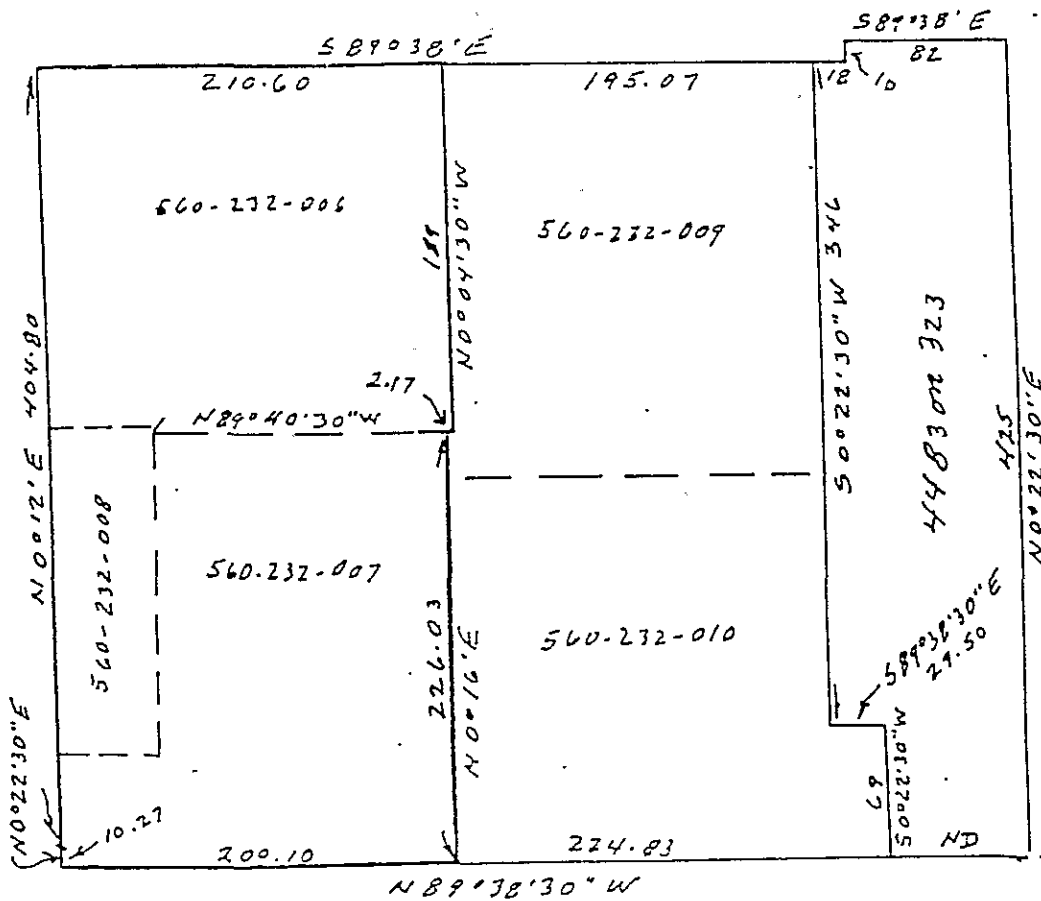
Portion of Lot 3, Section 24, Township 1 North, Range 5
West, Mount Diablo Base and Meridian, and portion of Lot 40,
Map of San Pablo Rancho, filed March 1, 1894, Contra County
Records, Described as follows:

Beginning on the north line of Wright Avenue at the east
line of south Tenth Street, said point of beginning also being
the southwest corner of the parcel of land described in the
deed to Franz S. Collischonn, et al, recorded January 15, 1971,
Book 6296, Official Records 6296, page 303; thence from said
point of beginning south 89° 38' 30" east, along said north
line being along the south line of said Collischonn parcel,
209.10 feet; thence north 0° 16' east, 226.03 feet; thence
south 89° 40' 30" east, 2.17 feet; thence north 0° 04' 30" west,
189 feet to the north line of said Collischonn parcel being the
south line of Hoffman Boulevard; thence north 89° 38' west,
along said south line, 212.60 feet to the west line of said
Collischonn parcel being the east line of said South Tenth
Street; thence along said east line south 0° 12' 30" west,
10.27 feet to the point of beginning."

Exhibit B

089577

S 10th St. (South Harbor Way)



S 12th St.

WRIGHT AVE

END OF DOCUMENT

100205